

from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

[69 FR 29424, May 24, 2004, as amended at 70 FR 51250, Aug. 30, 2005]

**§ 126.504 When is a concern removed from the List?**

If SBA determines at any time that a HUBZone SBC is not qualified, SBA may de-certify the HUBZone SBC, remove the concern from the List, and seek imposition of penalties pursuant to § 126.900. An adverse finding in the resolution of a protest also may result in de-certification and removal from the List, and the imposition of penalties pursuant to § 126.900. Failure to notify SBA of a material change which could affect a concern's eligibility will result in immediate de-certification, removal from the List, and SBA may seek the imposition of penalties under § 126.900.

[63 FR 31908, June 11, 1998. Redesignated at 69 FR 29424, May 24, 2004]

**Subpart F—Contractual Assistance**

**§ 126.600 What are HUBZone contracts?**

HUBZone contracts are contracts awarded to a qualified HUBZone SBC through any of the following procurement methods:

- (a) Sole source awards to qualified HUBZone SBCs;
- (b) Set-aside awards based on competition restricted to qualified HUBZone SBCs; or
- (c) Awards to qualified HUBZone SBCs through full and open competition after a price evaluation preference in favor of qualified HUBZone SBCs.

**§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?**

(a) In order to submit an offer on a specific HUBZone contract, the qualified HUBZone SBC, together with its affiliates, must be small under the size standard corresponding to the NAICS code assigned to the contract.

(b) A firm must be a qualified HUBZone SBC both at the time of its

initial offer and at the time of award in order to be eligible for a HUBZone contract.

(c) At the time a qualified HUBZone SBC submits its initial offer, and where applicable its final offer, on a specific HUBZone contract, it must certify to the CO that:

(1) It is a qualified HUBZone SBC that appears on SBA's List;

(2) There has been no material change in its circumstances since the date of certification shown on the List that could affect its HUBZone eligibility;

(3) It is small under the NAICS code assigned to the procurement; and

(4) If the qualified HUBZone SBC was certified pursuant to § 126.200(b), it must represent that it will "attempt to maintain" (See § 126.103) the required percentage of employees who are HUBZone residents during the performance of a HUBZone contract. If the qualified HUBZone SBC was certified pursuant to § 126.200(a), then it must represent that at least 35% of its employees engaged in performing the HUBZone contract reside within any Indian reservation governed by one or more of its Indian Tribal Government owners or reside within any HUBZone adjoining any such Indian reservation.

(d) If submitting an offer as a joint venture, each qualified HUBZone SBC must make the certifications in paragraph (c) of this section separately under its own name.

(e) A qualified HUBZone SBC may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the non-manufacturer rule set forth at § 121.406(b)(1) of this chapter, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC.

(1) There are no waivers to the non-manufacturer rule for HUBZone contracts.

(i) SBA will not issue contract-specific waivers as it does for small business set-aside and 8(a) contracts under § 121.406(b)(3)(i) of this chapter.

(ii) Class waivers issued under § 121.406(b)(3)(ii) of this chapter do not apply to HUBZone contracts.

(2) For HUBZone contracts at or below \$25,000 in total value, a qualified

HUBZone SBC may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

[69 FR 29424, May 24, 2004]

**§ 126.602 Must a qualified HUBZone SBC maintain the employee residency percentage during contract performance?**

Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(b) must “attempt to maintain” (See § 126.103) the required percentage of employees who reside in a HUBZone during the performance of any contract awarded to the concern on the basis of its HUBZone status. Qualified HUBZone SBCs eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern’s Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation. To monitor compliance, SBA will conduct program examinations, pursuant to §§ 126.400 through 126.403, where appropriate.

[69 FR 29425, May 24, 2004]

**§ 126.603 Does HUBZone certification guarantee receipt of HUBZone contracts?**

HUBZone certification does not guarantee that a qualified HUBZone SBC will receive HUBZone contracts. Qualified HUBZone SBCs should market their capabilities to appropriate contracting activities in order to increase the prospect that the contracting activity will adopt an acquisition strategy that includes HUBZone contract opportunities.

[69 FR 29425, May 24, 2004]

**§ 126.604 Who decides if a contract opportunity for HUBZone set-aside competition exists?**

The contracting officer for the contracting activity makes this decision.

**§ 126.605 What requirements are not available for HUBZone contracts?**

A contracting activity may not make a requirement available for a HUBZone contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O’Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing the requirement through the 8(a)BD program or SBA has accepted the requirement for award through the 8(a)BD program, unless SBA has consented to release the requirement from the 8(a)BD program.

[63 FR 31908, June 11, 1998, as amended at 69 FR 29425, May 24, 2004]

**§ 126.606 May a CO request that SBA release a requirement from the 8(a)BD program for award as a HUBZone contract?**

A CO may request that SBA release an 8(a) requirement for award as a HUBZone contract. However, SBA will grant its consent only where neither the incumbent nor any other 8(a) participant can perform the requirement. The request must be made to the AA/BD, who will make a determination after consulting with the AA/HUB.

[69 FR 29425, May 24, 2004]

**§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?**

(a) The contracting officer first must review a requirement to determine whether it is excluded from HUBZone contracting pursuant to § 126.605.

(b) If the contracting officer determines that § 126.605 does not apply, the contracting officer shall set aside the requirement for HUBZone, 8(a) or SDVO SBC contracting before setting aside the requirement as a small business set-aside.

(c) If the contracting officer decides to set aside the requirement for competition restricted to qualified HUBZone SBCs, the contracting officer must: